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OFFICE OF PETITIONS

In re Application of
Jan Lewandowski and Robert A.
Bessler
Application No. 10/729,199
Filed: December 5, 2003
Attorney Docket No. 34968US2
Title: ULTRASONIC DETECTION
OF EAR DISORDERS

DECISION ON PETITION
UNDER 37 C.F.R. §1.47(a)

This is in response to the petition under 37 C.F.R. §1.47(a)¹, filed March 9, 2004.

The above-identified application was filed on December 5, 2003, without an executed oath or declaration and identifying Jan Lewandowski and Robert A. Bessler as the joint inventors. Coincidentally, on March 9, 2004, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted" (Notice), requiring an executed oath or declaration in compliance with 37 C.F.R. §1.63 and a surcharge for the late filing of the oath or declaration. This Notice set a two-month period for reply.

¹A grantable petition under 37 C.F.R. §1.47(a) requires:

- (1) the petition fee of \$130;
- (2) a surcharge of either \$65 or \$130 if the petition is not filed at the time of filing the application, as set forth in 37 CFR § 1.16(e);
- (3) a statement of the last known address of the non-signing inventors;
- (4) either
 - a) proof that a copy of the entire application (specification, claims, drawings, and the oath or declaration) was sent or given to the non-signing inventor for review and proof that the non-signing inventor refuses to join in the application or
 - b) proof that the non-signing inventor cannot be found or reached after diligent effort;
- (5) a declaration which complies with 37 CFR §1.63.

Applicant has filed the instant petition, along with the associated petition fee and surcharge, a statement as to the last known address for the non-signing joint inventor, a statement of facts, copies of two letters, and a declaration which has been executed by joint inventor Lewandowski.

Petitioner has asserted that the non-signing inventor has refused to join in the application. Petitioner has set forth that he mailed a complete copy of the application to the last known address of the non-signing joint inventor. Petitioner has included a copy of the letter which accompanied this mailing, along with a copy of the non-signing inventor's response, in which he expressly refuses to join in the application.

Rule 47 applicant has met requirements (1) - (4) above.

Regarding the fifth requirement above, petitioner has not submitted a declaration which complies with 37 C.F.R. §1.63. The declaration submitted with the instant petition contains non-initialed and non-dated changes by joint inventor Lewandowski².

For this reason, the petition under 37 C.F.R. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Renewed Petition under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted above, except that the reply may include an oath or declaration executed by the non-signing joint inventor coupled with a declaration which corrects the deficiency noted above. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 C.F.R. §1.136(a).

The renewed petition should display "Please deliver to Paul Shanoski, c/o Office of Petitions" in a prominent manner.

To help assure prompt and proper attention to your response, please see Request for Alert Concerning Submitted Petitions, 1282 Official Gazette (May 18, 2004) for further information on how to assist the Office in delivering your submission to the correct location. The Petitioner may wish to consider telephoning the undersigned one month after the submission is made to confirm that the documents were properly delivered.

Any renewed petition may be submitted by mail³, hand-delivery⁴, or facsimile⁵.

The application file will be retained in the Office of Petitions for two (2) months.

² See 37 C.F.R. §1.52(c)(1) and MPEP 605.04(a).

³ Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

⁴ Customer Window, Mail Stop Petition, Crystal Plaza Two, Lobby, Room 1B03, Arlington, Virginia 22202.

⁵ (703) 872-9306 - please note this is a central facsimile number, and as such, there will be a delay in the delivery of the facsimile to the undersigned.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011. Please note that on approximately September 28, 2004, the Office of Petitions will relocate to the new PTO location in Alexandria. Although the mailing address will remain the same, the general phone number for the Office of Petitions which should be used for status requests will change to 571-272-3282, and the telephone number for the undersigned will change to 571-272-3225.



Paul Shanoski
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Office of Petitions
United States Patent and Trademark Office